

Service Date: December 31, 1985

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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|                                    |   |                         |
|------------------------------------|---|-------------------------|
| IN THE MATTER of the Application   | ) | TRANSPORTATION DIVISION |
| Of MONTANA CARRIERS, INC.,         | ) |                         |
| Billings, Montana to amend their   | ) | DOCKET NO. T-8791       |
| Class B Certificate of Public Con- | ) |                         |
| venience and Necessity, PSC 7920.  | ) | ORDER NO. 5646a         |

\* \* \* \* \*

FINAL ORDER

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APPEARANCES

FOR THE APPLICANT:

G. James Thielen, president and owner of Montana Carriers, Inc., P.O. Box 2295, Billings, Montana 59103

FOR THE PROTESTANT:

Mary Lynne Hobill, operator/manager, Ashland-Harlo Freight Lines, 640 St. Johns Avenue, Billings, Montana 59102

FOR THE COMMISSION:

Robin A. McHugh, Staff Attorney, 2701 Prospect Avenue, Helena, Montana 59620

BEFORE:

TOM MONAHAN, Commissioner and Hearing Examiner

Pursuant to 2-4-621, MCA, a proposed order authorizing a grant of the authority requested was issued in this matter on November 8, 1985. No exceptions, briefs or requests for oral argument have been received. Therefore, the Commission adopts the proposed order as its final order in this matter.

### BACKGROUND

1. On July 18, 1985, the Commission received an application from Montana Carriers, Inc., P.O. Box 2295, Billings, Montana 59103. Applicant seeks to amend its present Class B authority in order to allow it to serve the following cities, towns, and service points: Forsyth, Sanders, Hysham, Custer, Pompey's Pillar, Worden, Huntley, Rosebud and Billings. Applicant's Certificate of Public Convenience and Necessity, PSC No. 7920, would then read as follows:

CLASS B: General commodity freight between all points and places in the counties of Rosebud, Custer, Powder River, Treasure, Big Horn, Yellowstone, Carter, Fallon, Wibaux, Prairie and Dawson, Montana. LIMITATIONS: 1) Service to, from, or between the following cities, towns and service points is prohibited: Wibaux, Glendive, Terry, Miles City and Hathaway. 2) Transportation of the following commodities is prohibited: a) Money, currency, coin, bullion, precious metals, silverware, jewelry, precious stones, paintings, negotiable securities, negotiable bank checks, and other valuables requiring special handling and security. b) Mail between post office boxes and customers of Wells Fargo Armored Service Corporation between all points and places in the State of Montana. c) Audit and accounting media, data processing media and business records. d) Processed and unprocessed film and microfilm and incidental supplies relating to snapshots and microfilm. (LIMITATIONS: Film for commercial exhibition is excluded) e) Non-negotiable securities; and f) Non-negotiable bank checks and valuable papers, between all points and places in the State of Montana.

2. Following public notice of the application, the Commission received protests from H.F. Johnson, Inc., Billings, Hornoi Transport, Inc., Miles City, Dixon Bros., Inc., Newcastle, Wyoming, Big Horn Transportation Co., Hardin, and Ashland-Harlo Freight Lines, Billings. All of the protestants, with the exception of Ashland-Harlo, withdrew their protests when Montana Carriers agreed to add the following limitation to its Certificate of Public Convenience and Necessity: "(g) Commodities in bulk."

3. After issuance of proper notice a public hearing was held, beginning at 9 a.m. on Tuesday,

September 24, 1985, in the City Council Chambers, Forsyth, Montana.

SUMMARY OF TESTIMONY

Testimony of Applicant:

4. Mr. James Thielan, owner and president of Montana Carriers, Inc., appeared and testified in support of the application. Mr. Thielan has applied previously to amend his Class B authority but has been denied. He claimed that he is making the application again due to shipper demand. Mr. Thielan maintained that there is a need for daily service from Billings to Forsyth and the other communities. He stated that presently Ashland-Harlo serves Forsyth only two days a week. Montana Carriers owns four trucks and has dock and lift capacity to handle virtually any size shipment. At the present time Montana Carriers has interstate authority for the 48 contiguous states. If granted this additional authority Mr. Thielan indicated that his company would serve Forsyth and the other communities five days a week. He sponsored the introduction of three letters from supporting shippers who were unable to attend the hearing. In addition, he noted that 100 supporting statements from shippers had been submitted to the Commission.

Testimony of Shipper Witnesses:

5. Mr. James D. Purkett, owner of Kent Auto Body in Forsyth, appeared and testified in support of the application. Mr. Purkett stated that his business needs daily reliable service. Presently he receives a shipment only two or three times a week, and those shipments are unpredictable. He said that if a delivery is not made on Thursday he has to wait until the following week - a considerable inconvenience to his business.

6. Mr. Leroy Larsen of Forsyth, owner of L.M. Larsen, Inc., a farm equipment dealer, appeared and testified in support of the application. Mr. Larsen stated that he often needs shipments on an

emergency basis during critical farming periods. He explained that he cannot keep a large parts inventory and has a need for service on a next day basis from his supplier in Billings. He said that his biggest problem in emergency situations is delay.

7. Mr. Charles Lydes, General Manager of Mid-Yellowstone Electric Coop of Hysham, appeared and testified in support of the application. Mr. Lydes stated that his business needs daily service for the delivery of specialized parts. He explained that a delay in receiving parts costs money because the work of maintenance crews is held up. He noted that at present there is only periodic delivery service available to his community. Mr. Lydes praised the work done by Montana Carriers on the interstate shipments it has made to his business.

8. Mr. John Thomas Clifford, an employee of Valley Auto Supply of Forsyth, appeared and testified in support of the application. Mr. Clifford stated that lack of daily freight service is a big problem for Valley Auto Supply. He said Valley Auto Supply provides parts to various auto repair shops. Therefore, the failure of Valley Auto Supply to receive parts can mean that auto repair is delayed. He said that Valley Auto Supply could live with four day a week service but prefers daily delivery. He explained that his employer presently has an account with Ashland-Harlo.

9. Mr. Malcolm McRay, Chairman of the Rosebud County Commissioners, appeared and testified in support of the application. He stated that he favors competition and believes that Montana Carriers would deliver paper products to the second floor of the Courthouse.

10. Mr. Bart E. Kraus, shop manager for the Rosebud County Road Department, appeared and testified in support of the application. Mr. Kraus stressed the need for reliable daily service. He said that he has had problems getting parts from Billings, noting that on occasion such a delivery has taken a week.

11. Mr. Neil Donner, owner of Yellowstone Pharmacy of Forsyth, appeared and testified in support of the application. Mr. Donner also stressed the need for daily reliable service. He said that

he orders drugs out of Billings on Monday that should be delivered on Wednesday. Often, however, the deliveries are not made on time and customers have to wait for medicine. Mr. Donner said that he could adjust his business to four day a week service if the service were reliable and deliveries were made during business hours.

Testimony of Protestant:

12. Mrs. Mary Lynne Hobill, operator/manager of Ashland-Harlo Freight Lines, appeared and testified in opposition to the application. Ashland-Harlo has been a general commodity hauler for 25 years. It serves Eastern Montana on an interstate as well as intrastate basis. Mrs. Hobill indicated that she thinks some competition is good but that too much competition is harmful. She believes that her company will suffer if the present application is granted. She stated that costs are rising in the trucking business-most notably insurance costs-making it more difficult to turn a profit. Mrs. Hobill admitted that her company could not meet all the needs of shippers, but that Ashland-Harlo had increased service to Forsyth to four days a week. She claimed that the volume of freight is not sufficient to make daily service economically feasible.

DISCUSSION, ANALYSIS & FINDINGS

13. A threshold inquiry made when considering an application for a Certificate of Public Convenience and Necessity is whether the applicant is fit, willing, and able to provide the service applied for. In this case there is no question that the Applicant is fit. Montana Carriers is in good financial condition, and has the intention, experience and equipment to perform the service sought. Moreover, there is no evidence of illegal activities that would support a finding of unfitness.

14. The next question is whether public convenience and necessity requires that the Commission grant the requested authority. Section 69-12-323(2), MCA, provides:

If after hearing upon application for a certificate, the commission finds from the evidence that public convenience and necessity require the authorization of the service proposed or any part thereof, as the commission shall determine, a certificate therefore shall be issued. In determining whether a certificate should be issued, the commission shall give reasonable consideration to the transportation service being furnished or that will be furnished by any railroad or other existing transportation agency and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout 12 months of the year and the effect which the proposed transportation service may have upon other forms of transportation service which are essential and indispensable to the communities to be affected by such proposed transportation service or that might be affected thereby.

The questions to be considered in determining public convenience and necessity, implicit in the statute, were best stated in the case of Pan American Bus Lines Operation, 1 M.C.C. 190 (1936):

The question, in substance, is whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines of carriers; and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

1 M.C.C. at 203.

15. The first question, therefore, is whether there is public demand and need for the service proposed. Seven shipper witnesses testified in support of the application; in addition, three letters of support from shippers who could not attend the hearing were admitted into evidence. Further, 100 signatures of support from Billings, Forsyth, Hysham, and Custer were submitted with the application.

16. The shippers who testified indicated that they need regularly scheduled daily service. They stated that at present they receive service only two or three days a week and that this service is unpredictable and often at odd hours. Lack of daily service causes delay, inconvenience, and customer frustration, which ultimately results in loss of money. The shipper witnesses testified not merely to a general need for the proposed service; they gave, in addition, specific examples of deficiencies in the service they presently receive. Under these circumstances the Commission finds that there is a need for the service offered by Montana Carriers.

17. The second question is whether this need can be satisfied as well by existing carriers. The

evidence is unclear on the frequency of service presently provided by Ashland-Harlo. The Applicant claims that Ashland-Harlo serves Forsyth only two days a week, while Ashland-Harlo maintains it has increased service to four days a week. It is clear, however, that daily service is not being provided, and Ashland-Harlo admits that it cannot provide daily service nor meet all the needs of the shippers under present economic conditions. Under these circumstances the Commission has no choice but to conclude that shipper need cannot be satisfied by existing carriers.

18. The final question is whether the present application can be granted without endangering the operations of existing carriers. Once an applicant has made a prima facie showing of public need, the burden shifts to the protestant to demonstrate that granting the application will damage his business contrary to the public interest. To meet this burden the protestant must do more than merely assert that business will suffer if the application is granted. A fairly detailed showing must be made that the proposed competitive service will result in significant revenue losses to the protestant. In addition, the protestant must demonstrate that those losses will impair its ability to serve the public. Ashland-Harlo has failed to demonstrate, beyond general assertions, that its business will suffer contrary to the public interest if this application is granted. Therefore, the Commission does not find that the proposed service will damage Ashland-Harlo contrary to the public interest.

#### CONCLUSIONS OF LAW

1. The Montana Public Service Commission properly exercises jurisdiction over the parties and matters in this proceeding pursuant to Title 69, Chapter 12, MCA.
2. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter.
3. The Application does propose an operation that will serve a useful public purpose responsive to a public demand.

4. The foregoing public demand cannot satisfactorily be met by existing carriers and authorities.

5. The authority granted in this order will not endanger or impair the operation of existing carriers contrary to the public interest.

6. After hearing upon the application and after giving reasonable consideration to the effect of the proposed operation upon other transportation agencies, the Commission concludes from the evidence that public convenience and necessity require the authorization of the proposed service as described below. Section 69-12-323(2), MCA.

#### ORDER

NOW THEREFORE IT IS ORDERED that the Application in Docket No. T-8791 be granted.

IT IS FURTHER ORDERED that the Applicant return to the Commission its present Certificate of Public Convenience and Necessity, PSC No. 7920, in order that said Certificate can be amended and reissued to read as follows:

CLASS B: General commodity freight between all points and places in the counties of Rosebud, Custer, Powder River, Treasure, Big Horn, Yellowstone, Carter, Fallon, Wibaux, Prairie and Dawson, Montana. LIMITATIONS: 1) Service to, from, or between the following cities, towns and service points is prohibited: Wibaux, Glendive, Terry, Miles City and Hathaway. 2) Transportation of the following commodities is prohibited: a) Money, currency, coin, bullion, precious metals, silverware, jewelry, precious stones, paintings, negotiable securities, negotiable bank checks, and other valuables requiring special handling and security. b) Mail between post office boxes and customers of Wells Fargo Armored Service Corporation between all points and places in the State of Montana. c) Audit and accounting media, data processing media and business records. d) Processed and unprocessed film and microfilm and incidental supplies relating to snapshots and microfilm. (LIMITATIONS: Film for commercial exhibition is excluded) e) Non-negotiable securities; and f) Non-negotiable bank checks and valuable papers, between all points and places in the State of Montana; g) Commodities in bulk.

IT IS FURTHER ORDERED that the Applicant must, within thirty (30) days of the mailing of the notice of the rights herein granted comply with all rules and regulations of the Montana Public Service Commission.

Done and Dated this 31st day of December, 1985 by a vote of 5 -0 .

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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CLYDE JARVIS, Chairman

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JOHN B. DRISCOLL, Commissioner

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HOWARD L. ELLIS, Commissioner

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TOM MONAHAN, Commissioner

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DANNY OBERG, Commissioner

ATTEST:

Trenna Scoffield  
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.